IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRIT No. 2523 of 2004

M/S. MOHATA CONSTRUCTION COMPANY
V/S
THE AUTH. UNDER THE MINI.WAGES ACT & ANR.

Mr. NITIN TRIVEDI, for the appellant / petitioner

Mr. D.S. RAJVI, for the respondent

Date of Order : 24.5.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

This writ petition is in a second round of litigation in this Court. The writ arises in the circumstances, that the claim was filed against the petitioner, by the respondent No.2, before the respondent No.1, under the Minimum Wages Act, wherein, on 4.10.2002, an exparte award was passed, against which writ No.4295/02 was filed before this Court, which was disposed of by withdrawal on 23.2.2004, as therein a preliminary objection was raised by the respondents, that by virtue of Rule 29(4) of the Minimum Wages Rules, the petitioner has a remedy of moving application before the learned authority itself, for setting aside the exparte proceedings, and this Court, noticing that the writ was filed promptly on 22.10.2002 itself, permitted the petitioner, even in the year 2004, to

approach the authority by moving appropriate application under Rule 29(4) within a period of two weeks from that date, and it was also directed, that "in case, petitioner files that application under Rule 29(4) within a period of two weeks from today, the learned authority shall consider the application on its own merits objectively and dispassionately." Thereafter according to the petitioner, application was submitted on 10.3.2004, and the same has been rejected vide impugned order (Annex.7) dated 25.3.2004, on the ground of limitation.

It is contended by learned counsel for the petitioner, that he applied for certified copy of the order of this Court dated 23.2.2004 on 24.2.2004, and the copy was received on 25.2.2004, and computing period of two weeks from that date, the application was submitted within time, which could not be dismissed. It is also contended, that this Court, in the order dated 23.2.2004, had clearly directed the authority to consider the application on merits objectively and dispassionately, and therefore, it was not open to the learned authority to dismiss the application on the technical ground of delay.

Learned counsel for the respondent, on the other hand submitted, that apart from the fact that it was made clear in the order dated 23.2.2004, that application was to

be filed within two weeks from that date, by using the expression "within a period of two weeks from today", and therefore, the application was required to be filed latest by 8.3.2004, while it has been filed on 10.3.2004. The other thing submitted was, that this Court had directed the learned authority to consider the application on its own merits objectively and dispassionately, if the application was filed within two weeks, obviously not otherwise, and therefore, the learned authority was well within its jurisdiction to dismiss the application as barred by time. The other submission made by learned counsel for the respondent is, that by the order dated 23.3.2004, the petitioner was given liberty to approach the learned authority, by moving appropriate application under Rule 29(4), while in the present case, even on 10.3.2004, the petitioner had not approached the learned authority, inasmuch as, even according to the petitioner, the application was submitted to the respondent No.2, assuming it to be "through proper channel", as the claim was heard at Bikaner, and the respondent No.2 is said to have forwarded the same to the learned authority, which was said to have been received on 12.3.2004, while as a matter of fact, the respondent No.2 was not competent to receive the application, apart from the fact, that the petitioner handed over the application to the respondent No.2, from whom it was received by the learned authority, not on

12.3.2004 but on 23.3.2004. Therefore, the authority was perfectly right in dismissing the application.

I have heard learned counsel for the parties and have gone through the record. It may be recalled, that vide order dated 13.2.2006, the record of the learned trial Court was ordered to be requisitioned, which has been received, and I have perused the same as well.

From perusal of the record, it transpires, that the said application dated 10.3.2004 hardly constitutes any application, as it is simply letter, written by the petitioner, on its letterhead, purporting to be application, and bears no court fee stamp, apart from the fact, that it is not supported by any affidavit either. Then this Court, in the order dated 23.2.2004, had permitted the petitioner to file application, within two weeks, considering the fact, that the award was passed on 4.10.2002, and petitioner had approached this Court on 22.10.2002. I may make it clear, that the order dated 23.2.2004 was passed by myself, and keeping in view the provisions of Rule 29(4), whereunder application can be filed within a period of one month, considering the time lapsed till approaching this Court by writ No.4295, taking a benevolent view, two weeks' time was granted from the date of passing of the order dated 23.2.2004. Admittedly,

the purported application has not been filed within two weeks from that date. It would be relevant to notice here, that 8.3.2004 was Monday, and 10th was Wednesday, with no intervening holidays. Thus, the said application cannot be said to have been filed within two weeks, as contemplated by the order dated 23.2.2004. Secondly, as noticed above, the said application hardly constitutes any application as contemplated by order dated 23.2.2004. Thirdly without standing to the ceremonies, even if it were to be treated to be application, in terms of the order dated 23.2.2004, the application was required to be submitted to the authority, (Respondent No.1), and the respondent No.2 does not at all constitute any channel between the petitioner and the authority, rather the respondent No.2 is the opposite party, to whom copy of the application could have been given, but then, the application was required to be filed before the learned authority, the respondent No.1. Then a look at the record shows, that in the forwarding letter written by the respondent No.2, it has clearly been mentioned, that the representative of the present petitioner, forcibly delivered the letter (alleged application) dated 10.3.2004 to the respondent No.2, even though he was advised that it is required to be submitted directly to the respondent No.1, but the representative insisted, that it would be delivered to respondent No.2 only, and it is the respondent No.2, who should send it to

Ajmer. Thus, it cannot be said, that the petitioner ever submitted the application to the respondent No.1, and even if it is treated to have been received by the authority, consequent upon being forwarded by the respondent No.2, then it appears that from the record, that it was received by the authority as late as on 22.3.2004. Thus, on any parameter, it cannot be said to have been filed within time. Thus, I do not find any error in the impugned order rejecting the application.

Before concluding the order, I may also observe, that apart from all the above findings, in order to satisfy my conscience, about the existence of sufficient cause for absence of the petitioner on 18.9.2002 also, I have perused the record, and find, firstly, that there is no affidavit given in support of the alleged application dated 10.3.2004. Then in para-3 thereof, all that has been pleased is, that due to some urgent work applicant could not appear before the concerned authority, for which information regarding absence was also sent, vide letter dated 18.9.2002. Suffice it to say, that the nature of "urgent work" has not been disclosed. Then the petitioner is an establishment, which was being represented before the learned authority, by the counsel, as appears in the order-sheet dated 11.7.2002, and then, I do not find any such letter dated 18.9.2002 on record, which may have been sent by the petitioner, though I find another letter of the

petitioner on record, which had been addressed to the learned authority. Thus, on the face of it, it doesn't inspire any confidence, that on 18.9.2002, the petitioner ever sent any information to the learned authority as pleaded in the alleged application.

Thus, taken from any stand point, I do not find any force in the writ petition. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

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